Communiqué

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PRESIDENT'S REPORT

Timothy J.P. Killeen
President

About eight years ago, one of my then partners told me that I should run for election as a Bencher. I hadn't even considered it. I asked him why he wanted me to run. He said there were a few reasons. It was important for the professio to have the perspective of different types of lawyers. It was important for the firm to have someone on the inside, with some influence over what was going on. It would be lots of fun. I asked him why he didn't run himself. "Please, I'm too busy for that."

When I first started, it was a lot of work. We had eight or nine Bencher meetings a year, often with very long agendas. We discussed a wide variety of issues, ranging from changing the Code of Professional Conduct to where we should buy office supplies. We had appearances by members who wanted us to consider things such as extending the time to pay a deductible on an insurance claim. We were supplied lengthy materials and often sat late into the afternoon.

One of my first committees was Discipline (now known as the Complaints Investigation Committe We met every three weeks, at least for a half day. I think the first year we had about 20 or 25 meetings in total. I was on one of two discipline committees, so the total workload for Law Society staff was much heavier than mine. Our meetings frequently involved agendas with fifteen or twenty matters. Many of the matters were almost trivial and had involved several letters back and forth ov the space of months. It was a ton of work.

Like a lot of what we did, it also didn't seem particularly productive. So we changed it. The Benchers decided that we wanted to spend our time on important matters involving policy and less time on running the place. We decided to focus on what we should be doing to effectively protect t public in matters involving the legal profession. While that sounds like we were deciding to attack the profession, we weren't. We were trying to make things better, so that lawyers could better serv their clients.

Lots of changes flowed from that. Lawyers who don't keep up with changes in practice and the law often end up making mistakes, so we have put resources into Continuing Legal Education to make the Law Society effective at providing knowledge to our members, either alone or in partnership wi others such as the MBA. Lawyers who are having personal problems can have problems with their practices, so we created Lawyers at Risk. Lawyers who are vulnerable can use help, so we created the Equity Ombudsperson.

The Benchers also decided that the public gained from changes in the way lawyers were able to practise. We simplified practice by cutting the Trust Accounting rules in half. We embraced mobility, reasoning that it was something that could help our clients, as well as our members. We passed protocols allowing much greater movement and are working hard on making sure that we have the structure in place to accommodate lawyers moving across the country.

We also looked at the discipline process. The Benchers reasoned that the public wanted us to resol matters, not just discipline lawyers. We started mediation and now resolve a significant number of matters by a phone call or two, often within a day. The clients get what they need and the lawyer isn't thrust into an adversarial process that is draining. The Benchers recently unanimously approv the way our system is working and the results achieved.

Remember, all this at less cost to you.

Eight years later, my time is almost up. I've worked with lots of great people. I've been part of lots of changes that have helped all of us. I haven't travelled the world, but have been to Hecla, Portage La Prairie and Clear Lake several times. Now it is time for some of you to take over. It is important for the profession. It is good for your firm. It is fun. What my partner was wrong about was that no one is too busy to run. There are many of you who would make great Benchers. Give it a try.

Benchers' Meeting Highlights

Allan Fineblit, Q.C.
Chief Executive Officer

The Benchers of the Law Society of Manitoba met on January 31, 2002. Here are the highlights.

- President **Tim Killeen** reported on a meeting of the Federation of Law Societies' Restructuring Committee. The Federation committee had a number of recommendations as t how the Federation could be more effective in doing its business. Tim reported progress was slow, reflecting a diversity of opinion among the 13 Law Societies that make up the Federation.

- The Benchers considered a proposal from the Queen's Bench Rules Committee to abolish th Queen's Bench Rule 71 **fee assessment** process and to convert the Law Society's voluntary fee arbitration process to a mandatory one. After considerable discussion, Benchers voted to advise the Committee that from their perspective the success of the Law Society's fee arbitration process was connected to its voluntary nature and as such they were not attracted mandatory Law Society fee arbitrations.

- Benchers considered a **discipline monitoring report**. The report noted that the complaints investigation process is meeting its targets in terms of timeliness. Benchers discussed the increasing emphasis on informal resolution methods and overwhelmingly expressed approva for that direction.

- Benchers reviewed the third quarter **financial statements** and noted that inspite of reduced revenues from the investment of our reserves, we are at or better than our year-to-date budge because of reduced expenditures in each fund.

- The 2002/03 budget was presented and discussed. The budget forms the basis of the annual practising fees and Benchers noted with satisfaction that Manitoba's fees will be among the lowest in the country. The Bencher budget, which outlines the expenses for Benchers meetin and committees, was presented by Vice-President **Lori Spivak** and approved.

Allan's Odds and Ends

- As of February 1, 2002, 219 Kennedy Street belongs to the Law Society free and clear of all encumbrances. If you see smoke, it's just Ryan burning the mortgage.

- Welcome to **Jennifer James**, who is joining us as complaints counsel while Leah Kosokowsky is on her maternity leave.

- And speaking of babies… congratulations to our **Carol Hiebert** and her husband, Marlowe, the birth of their new baby girl, Cassidy Grace, and to **Leah Kosokowsky** and her husband Ted, on the birth of their new baby girl, Linnea Catherine.

- Karen Fulham wants you to check out the new Manitoba Courts' website, www.manitobacourts.mb.ca.

Recent Court Decision Sends Strong Message About Sexual Harassment

Brenlee Carrington Trepel
Equity Ombudsperson

A new Ontario Court of Appeal decision emphasizes the reason it's important for law offices to implement respectful workplace policies and initiatives.

According to the December 2001 judgment in Simpson v. Consumers' Association of Canada, [2001] O.J. No. 5058, supervisors who engage in unwelcome conduct of a sexual nature with their staff, at the office or after hours, are courting problems.

The Ontario Court of Appeal held that dismissing Mr. Simpson, the executive director of the Consumers' Association of Canada, for sexually harassing his employees was justified.

The Court of Appeal found that "the trial judge erred by suggesting that Mr. Simpson should not be held accountable for any prevailing sexual culture at the CAC, or that he should not be held accountable because there was no sexual harassment policy in place there. Given that he was executive director in charge of staff, he could have implemented such a policy, and should not benefit from its absence."

Another important element of the Ontario Court of Appeal's decision is that it held that incidents arising outside the office or after formal business meetings have ended can still be construed to hav happened as part of the employment context.

The Court ruled that: "It would be artificial and contrary to the purpose of controlling sexual harassment in the workplace to say that after-work interaction between a supervisor and other employees cannot constitute the workplace for the purpose of the application of the law regarding employment-related sexual harassment."

The Court of Appeal cited with approval these comments by Dickson C.J. in Janzen v. Platy Enterprises Ltd., [1989] 1 S.C.R. 1252: "Sexual harassment in the workplace attacks the dignity an self respect of the victim both as an employee and as a human being."

The Court of Appeal also addressed the issue of whether employees can be seen to be consenting t supervisor's behaviour, stating: "Because of the power imbalance in an employee's relationship wi a supervisor, and the perceived consequences to objecting to a supervisor's behaviour, particularly when the behaviour is not directed specifically at the employee (for example, making comments to touching another employee, being nude in front of a group of people), an employee may go along with the conduct. In those circumstances, the employee will be effectively consenting to unwelcom conduct because she feels constrained from objecting....It is difficult for staff to disapprove of the conduct of a superior without feeling that their jobs may thereby be in jeopardy.

The Court found that "a supervisor must carry out management's duties to its workers and to the organization to protect both from sexual harassment claims - not be the cause of them."

The Ontario Court of Appeal added that "Where a supervisor in a position of authority offers advancement in employment in exchange for sexual favours, this conduct represents the clearest abuse of power. It is also a breach of duty both to the employee and to the employer, who is obliged to offer advancement fairly and equally on the basis of merit."

The Ontario Court of Appeal found that as a result of sexual harassment, "morale was low, the offi was infused with gossip and concern about the respondent as a result of conduct perceived as inappropriate and demeaning to those at whom it was directed."

The Law Society of Manitoba has a Model Respectful Workplace Policy, and other model equity policies, on its website at www.lawsociety.mb.ca. If you'd like to discuss adapting these policies fo your office, or to discuss any kind of discrimination or harassment issue, please contact me. The Equity Ombudsperson service is strictly confidential, free of charge and neutral. Feel free to contac me confidentially by:

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Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Practising to Inactive
October 10, 2001 Lindy J.R. Choy
November 2, 2001 Joel R. Braemer
December 13, 2001 Janet L.J. Mayor
January 1, 2002 Ronald S. Perozzo, Q.C.
January 1, 2002 Nadine S. Silverman
January 1, 2002 Jeff B. Norton
January 1, 2002 Patricia J. Ramage
January 7, 2002 Patti-Anne L. Umpherville
January 8, 2002 Abraham Anhang
January 15, 2002 Garry T. Miller
January 17, 2002 Bradley E. Patzer
January 18, 2002 Donald M. Hewak
January 31, 2002 Evelyn Braun

Non-Practising to Practising
January 1, 2002 Jeff M. Kuhl
January 1, 2002 Magdalena K. Siepka
January 1, 2002 Robert J. Tougas
January 7, 2002 Janice Y. Lederman
January 24, 2002 Shawn D. Hughes
February, 1, 2002 Monique D.M. St. Germain

Inactive to Practising
January 1, 2002 Robert D.J. Dawson
January 1, 2002 Michelle A. Sedgwick

February 1, 2001 Sara Kinnear
February 1, 2002 Scott B. Ransome

Transfer from Another Province
The following people were called to the Bar of Manitoba and are now entitled to practise law in thi jurisdiction, having fulfilled the requirements of Rule 94.

December 20, 2001 Wendy Y. Martin-White, Law Society of Saskatchewan
January 25, 2002 Karen W. Blicker, Law Society of Upper Canada
January 25, 2002 Zygmunt Machelak, Law Society of Upper Canada

Call to the Bar
The following people were called to the Bar of Manitoba after successfully completing the requirements of the bar admission course and articling program.

December 20, 2001 Reagan A. MacKenzie
December 20, 2001 Laurel E. Irvine
January 25, 2002 Glenn R. Lockhart

In Memoriam

Rudolph Anderson who passed away on November 19, 2001 at the age of 78. Mr. Anderson received his call to the Bar on May 31, 1952. Mr. Anderson practised law with the firm of D'Arcy and Deacon for 49 years. He served as a Bencher of the Law Society of Manitoba from 1978 to 198 and was also a course instructor for the Bar Admission Course. Mr. Anderson also served as a part-time judge of the Provincial Court.

Manly Wilfred Israel who passed away on December 3, 2001 at the age of 75. Mr. Israel received his call to the Bar on November 9, 1953. Mr. Israel practised law with the firm Manly Israel and Associates for 42 years.

The Honourable Madam Justice Eileen Margaret Nash who passed away on December 5, 2001 the age of 52. Madam Justice Nash received her LL.B. from the Faculty of Law at the University of Manitoba in 1974 and obtained her call to the Alberta Bar in 1975. Madam Justice Nash worked fo the Crown Prosecutor's Office for 15 years before receiving her appointment as a judge of the Provincial Court of Alberta in 1991. In 1993 Madam Justice Nash was elevated to the Court of Queen's Bench of Alberta.

Hyman Irwin Corne who passed away on December 27, 2001 at the age of 98. Mr. Corne receive his call to the Bar on October 13, 1927. Mr. Corne started practising law as a sole practitioner and subsequently expanded his practice to become a partner of the firm of Corne, Gillis, Corne & Corn (now known as Corne & Corne). He retired in 1983, having practised law for 55 years. In 1963 Mr. Corne established a scholarship fund at the Faculty of Law which currently awards a prize of $100 the student with the highest standing in the third year law course "Problems in Contract and Tort Law".

Norman Clague Christie, Q.C. who passed away on January 5, 2002 at the age of 84. Mr. Christi

received his call to the Bar on March 21, 1945. Mr. Christie was a co-founder of the firm, Christie, DeGraves (now known as Inkster Christie Hughes), where he practised law for 45 years until his retirement in 1990. Mr. Christie served as a Bencher of the Law Society from 1968 to 1971. Mr. Christie was appointed Queen's Counsel on December 31, 1964.

Donald MacLeod Gordon, FCA who passed away on February 7, 2002 at the age of 79. Mr. Gordon served as a Lay Bencher of the Law Society of Manitoba from January, 1994 to January, 1997.

Law Society Files Complaints Against First Canadian Title and Bank of Montreal

The Law Society of Manitoba has registered complaints with the Superintendent of Insurance in Manitoba and the Superintendent of Financial Institutions in Ottawa with respect to the activities of First Canadian Title and the Bank of Montreal. The complaints relate to the Home Closing Services Program offered by the Bank of Montreal through First Canadian Title. The bank promotes its program as offering purchasers of residential real property (who are approved for a mortgage with the bank) a "one-stop closing solution" which includes legal representation, legal fees and disbursements, title insurance through First Canadian Title and a closing cost deferral option. All of these services are provided for a single fixed fee. In Manitoba the fee is $539 plus registration fees and taxes.

The Bank of Montreal earns a referral fee ($25 in Manitoba) from First Canadian Title for each purchaser who takes out the Home Closing Services Program through the title insurer. The law society's information suggests that the commitment to purchase title insurance is made by the purchaser in the presence of an officer of the Bank of Montreal. After the commitment is made, the bank officer refers the purchaser to First Canadian Title, which manages the process on behalf of the bank. This management includes referring the purchaser to a lawyer approved by First Canadian. All lawyers must enter into a contractual agreement with First Canadian Title before being approved to participate in the Home Closing Services Program. The lawyer ultimately acts as legal counsel for the purchaser, lender and title insurer.

The Law Society has complained to the Superintendent of Insurance in Manitoba that the payment of the referral fee by First Canadian Title and its acceptance by the Bank of Montreal and the involvement of the bank in obtaining the commitment from the purchaser to buy title insurance are all activities that contravene the Insurance Act of Manitoba. The Society has also complained to the Superintendent of Financial Institutions in Ottawa that the Bank of Montreal's promotion of First Canadian Title, its acceptance of referral fees and its facilitation of the commitment to buy title insurance offend the Bank Act and the Insurance Business (Banks) Regulations. The complaints are currently under active investigation.

The Benchers authorized filing the complaints after they received an independent legal opinion that the Home Closing Services Program contravened provincial and federal legislation. The Benchers were concerned not only with the legislative issues but also that under the program consumers may not receive independent legal advice about whether or not they should purchase a title insurance policy.

First American Corporation, which is the parent company of First American Title and First Canadi Title, has a history of enforcement actions in the US. In 1999, the California Department of Insurance settled an enforcement action against First American Title for providing inducements or illegal kickbacks to real estate agents in exchange for business referrals. First American agreed to pay a fine of $2.5 million (US). In November of last year, First American Corporation agreed to a settlement with the US Department of Housing and Urban Development (HUD) resulting from HUD's investigation of First American for breaches of section (8)(a) of the Real Estate Settlement Procedures Act, which prohibits kickbacks and referral fees amongst settlement providers. The settlement requires First American to pay $1 million to approved non-profits for housing counsellir assistance and education and $200,000 to the US Treasury for the cost of investigation and monitoring the agreement.

Think Old

Allan Fineblit, Q.C.
Chief Executive Officer

In the late '60s I ran away with the circus. Well…it wasn't really a circus, more of a travelling carnival with games and rides that toured small towns in Saskatchewan, Manitoba and Northwest Ontario. Occasionally we would be joined by independent itinerants and my favourite of those was the guessing game. For a mere dollar bill (this was the pre-loonie '60s remember) the operator, Gerry, would try and guess something about you, usually your weight or age. The rules were libera and Gerry was permitted several years or pounds (remember, this was also the pre-metric '60s) of grace, but he did amazingly well and certainly made a lot more money than I did getting people to knock wooden milk bottles off a table with a baseball. He once told me his secret to guessing age was "freshness". I never really knew what Gerry was talking about. The freshness test has only eve worked for me in the dairy case.

So now that you know Gerry's secret, try this test. Guess how old we are…no, not me and Tim (those '60s references were too much of a give away)…I mean the collective "we", the Law Societ of Manitoba. I'll even give you some clues.

First, don't judge our freshness by the carpet in the building. Remember that this is at least our four location. Don't judge our freshness by the jaunty Harold Stubbs, Q.C. who was the Secretary of the Law Society for over 20 years starting in 1958. He was actually the sixth Chief Executive Officer o the Society. Are you getting the point? We are old, very very old. Here's another clue: there's no o in the world alive today who was around when the Law Society of Manitoba was created by an Act of the legislature of a very new province. Give up? On February 28, 2002 the Law Society of Manitoba turned 125 years old.

We will have a big bash in the fall and do some other neat stuff. But for now, all you get is a little carnival magic. Hand over the smallest bill in your wallet and I'll tell your fortune. I am setting my crystal ball for February 28, 2007, when the Law Society will be turning a cool 130. Here are ten things that I see in our foggy future:

1. I see in my crystal sphere that on February 28, 2007 you will get a "letter from a former Bencher now retired" telling you how everything good that happened at the Law Society is

thanks to him and everything bad is my fault.

2. The handful of old men who currently work at the Law Society will all be retired and the onl man left will be Richard Porcher. As a result, the men's washroom will be converted to a ste room and Richard will have to go next door to Tony Roma's (no coffee before 11 a.m. Richard!).

3. On February 28, 2007 Gord Hoeschen will be President of the Law Society and Jon Van der Krabben will be the Vice-President. (It could be the other way around but I'll go with age before beauty.)

4. The Great Library will still be operating as kind of a museum of law. Actual legal research w all be done on free internet sites. Fear not, Garth Niven will still be in charge.

5. In November of 2000 my pal, Doug Finkbeiner, predicted in a speech delivered to the Pitblac Lectures that limited liability partnerships would be here by November, 2002. Given the rece meeting we've had with Government and Bar Association people, I'll boldly predict Doug's 2007 firm name will be Taylor McCaffrey L.L.P.

6. You will be reading the February, 2007 Communiqué from your computer. That gives you fi years to find out where the "delete" button is located.

7. On February 28, 2007 there will be at least a dozen inter-provincial law firms operating in Manitoba. Aikins will be one, but the majority will be small and mid-size firms. What's this see? One firm in Manitoba practising in California. It's hard to make out the name in the den fog of the crystal orb…looks like "Pinx and Johnny Cochrane".

8. There are no restrictions on advertising in 2007. Can there really be an ad for Randy "The Hammer" McNicol?

9. You know how Toyota gets around price fixing by calling it "Access Toyota" and telling us we get to avoid all the haggling? Well, in 2007 lawyers bring back the little red "Guideline t Fees" that disappeared in the '70s, only now we call it "Access Lawyer".

10. On February 28, 2007 your Manitoba call to the Bar will entitle you to practice anywhere in Canada. The only rule is, that to make sure your home jurisdiction is clear, you have to wear distinct hat. A beret for Quebecois, a cowboy hat for Albertans, B.C. lawyers wear those K-T umbrella hats…you get the picture. Now Manitoba's Benchers had a huge debate until Garth Smorang remembered those cheese heads Green Bay Packers fans wear to the Super Bowl. I 2007, Manitoba lawyers appearing in other provinces will wear perogy hats.

If I am wrong about any of these predictions, you'll get a full refund on March 1, 2007. Come see r at the home.

Up-Date on Money Laundering Legislation

Allan Fineblit, Q.C.

Chief Executive Officer

By the time you read this article it may be stale news. This is a fast moving issue and Communiqué has an early deadline. As you likely know, the Federal money laundering legislation includes provisions that require lawyers to report their clients, in certain circumstances, to a government boc called the Financial Transactions Reports Analysis Centre (FINTRAC). The legislation prohibits those lawyers from even notifying their clients that they have reported them. In our view, and in the view of every Law Society in Canada, this seriously undermines the solicitor/client relationship. It makes it impossible for clients to properly exercise their fundamental rights to counsel.

The Federation of Law Societies is co-ordinating a challenge to the legislation. An interlocutory injunction has been obtained in the Supreme Court of British Columbia and upheld in the B.C. Cou of Appeal. The Alberta Court of Queen`s Bench took a different approach, ordering on an interlocutory basis that reports not be sent to FINTRAC but instead be sealed and sent to the Law Society to be held pending a full hearing on the matter. The Federation of Law Societies is appealir that order.

In Ontario, the Superior Court of Justice granted a temporary exemption to Ontario lawyers from th reporting requirements similar to what was ordered in British Columbia.

Throughout this litigation the Federation has requested that the Minister of Justice accept the B.C. order as having national application in order to avoid the need to litigate in every province and territory. As of today, the Minister has declined with the result that the legislation operates in different ways in Ontario and B.C. than it does in Alberta, which is again different from the rest of Canada.

As of today at least Manitoba lawyers are subject to the money laundering legislation and, in particular, the reporting requirements to FINTRAC. As such, the Federation will proceed with its litigation in Manitoba and in the other provinces and territories. We will keep you posted.

Bencher and Regular Committee Meeting Attendance

June 1, 2001 to January 31, 2002

Click here to download the Adobe PDF file.

Notice of Benchers' Meeting

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Thursday, Apri 11, 2002 at 12:30 p.m.** in the Society's Classroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society, and especially members of the Western Bar Association, are encouraged t attend and participate in the deliberations of the governing body.

Notice to the Profession

Re: Guidelines on Ethics and the New Technology

New technology has had a significant impact on the practice of law. In response to these developments, The National Ethics Group of the National Technology Committee of the Federatior of Law Societies has developed "Guidelines on Ethics and the New Technology" as a resource for members who are practising law in an increasingly complex world. The Practice and Ethics Committee of The Law Society of Manitoba has recently approved an amended form of Guidelines which is available for download as an Adobe PDF file.

Outstanding Interest on Client Accounts

Pursuant to Section 47 of The Law Society Act, a lawyer is entitled to charge interest on unpaid fee charges or disbursements where the lawyer and client have so agreed. Such interest is calculated from a date that is at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged shall not exceed the rate established under Section 161 of t Income Tax Act (Canada) on the date the bill is delivered. **The interest rate effective for the peri January 1, 2002 to March 31, 2002 is 7%.**

An Invitation to Members of the Bar

Re: Lockyer/Truscott Presentation

On March 7 there will be a special 90 minute session with Toronto criminal lawyer James Lockyer and his client Steven Truscott that will be held from 5:30 p.m. to 7:00 p.m. at the home of David Asper, 1015 Wellington Crescent. It is restricted to members of the Manitoba Bar. Please note that Headnotes and Footnotes (the newsletter of the MBA) the venue was stated to be the Can-West Building on Portage Avenue. As noted it has now been changed to Mr. Asper's residence.

In 1959 the then 14-year old Truscott was convicted of the murder of a 12-year-old girl and sentenced to hang. That sentence was commuted to life imprisonment and Truscott served 10 years before his release in 1969. He then lived under an ssumed name, married, and had two children. A couple of years ago he emerged from anonymity and asked that his case be re-opened. Last March a one hour documentary on the case was shown on the CBC's Fifth Estate which cast serious doubt o Truscott's guilt. A number of books have been written about the case which also questions his conviction. Mr. Lockyer has recently submitted a 558 page brief to the Minister of Justice asking th the jury's verdict be overturned. The brief makes for compelling reading and presents a very powerful case against Truscott's conviction. There is no Canadian criminal case that is better know outside Canada, and 43 years after it happened it is once again in the news. Mr. Lockyer is the director of the Association in Defence of the Wrongfully Convicted. Mr. Truscott is a soft spoken millwright who seeks justice after nearly half a century.

We can look forward to a fascinating and unforgettable session.

If you're thinking of going, contact:
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COMMUNIQUÉ BACK ISSUES

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